

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

ARTIE J. ALLEN,	:	CIVIL ACTION NO. 1:07-CV-1516
	:	
Plaintiff	:	(Judge Conner)
	:	
v.	:	
	:	
WEIS MARKETS, INC.,	:	
TIM WOODITCH, UNKNOWN	:	
EMPLOYEE No. 1, UNKNOWN	:	
EMPLOYEE No. 2, MATTHEW	:	
B. CLAEYS, and CUMBERLAND	:	
COUNTY JAIL (WARDEN),	:	
	:	
Defendants	:	

ORDER

AND NOW, this 10th day of December, 2009, upon consideration of the joint motion (Doc. 70) to stay the dispositive motion deadline, and upon further consideration of the report of the magistrate judge (Doc. 69), recommending that the above-captioned action be dismissed for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, see FED. R. CIV. P. 41(b), and, following an independent review of the record, it appearing that plaintiff has failed to obey Local Rule 7.6 and the order of the magistrate judge dated October 7, 2009, and that the magistrate judge recommends dismissal of the action, and it further appearing that neither party has objected to the magistrate judge's report and recommendation,¹ and that there is no clear error on the

¹ Objections were due by November 27, 2009. As of the date of this memorandum and order, none have been filed.

face of the record,² see Nara v. Frank, 488 F.3d 187, 194 (3d Cir. 2007) (explaining that “failing to timely object to [a report and recommendation] in a civil proceeding may result in forfeiture of *de novo* review at the district court level”), it is hereby ORDERED that:

1. The report of the magistrate judge (Doc. 69) is ADOPTED.
2. The above-captioned case is DISMISSED for failure to prosecute pursuant to Rule 41(b). See FED. R. CIV. P. 41(b).
3. The motion (Doc. 59) to dismiss the amended complaint is DENIED as moot.
4. The motion (Doc. 78) to stay case management deadlines pending adjudication of defendants’ motion to dismiss is DENIED as moot.

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge

² When parties fail to file timely objections to a magistrate judge’s report and recommendation, the Federal Magistrates Act does not require a district court to review the report before accepting it. Thomas v. Arn, 474 U.S. 140, 149 (1985). As a matter of good practice, however, the Third Circuit expects courts to “afford some level of review to dispositive legal issues raised by the report.” Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987). The advisory committee notes to Rule 72(b) of the Federal Rules of Civil Procedure indicate that “[w]hen no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” FED. R. CIV. P. 72(b), advisory committee notes; see also Henderson, 812 F.2d at 878-79 (stating that “the failure of a party to object to a magistrate’s legal conclusions may result in the loss of the right to *de novo* review in the district court”); Tice v. Wilson, 425 F. Supp. 2d 676, 680 (W.D. Pa. 2006) (holding that the court’s review is conducted under the “plain error” standard); Cruz v. Chater, 990 F. Supp. 375-78 (M.D. Pa. 1998) (holding that the court’s review is limited to ascertaining whether there is “clear error on the face of the record”); Oldrati v. Apfel, 33 F. Supp. 2d 397, 399 (E.D. Pa. 1998) (holding that the court will review the report and recommendation for “clear error”). The court has reviewed the magistrate judge’s report and recommendation in accordance with this Third Circuit directive.